



## APPENDIX.

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- A. 162 witnesses testified that to them the term Raisin Bran meant a product composed of raisins and bran, or raisins and bran flakes, or a bran cereal with raisins, or a bran cereal with fruit, or cereal with fruit, or the like.\*

\*R. 826, 836, 843, 1035, 1125, 1135, 1187, 1206, 1210, 1216, 371, 376, 380, 382, 385, 387, 413, 416, 418, 423, 425, 440, 444, 446, 450, 456, 457, 459, 462, 487, 488, 492, 494, 499, 504, 537, 543, 571, 574, 579, 581, 586, 621, 633, 635, 644, 646, 656, 658, 661, 665, 668, 675, 678, 690, 693, 695, 699, 710, 728, 738, 743, 752, 757, 761, 764, 768, 772, 775, 819, 824, 838, 847, 850, 852, 855, 856, 858, 861, 863, 875, 882, 884, 886, 887, 1030, 1036, 1039, 1046, 1057, 1060, 1067, 1070, 1072, 1075, 1078, 1082, 1091, 1095, 1100, 1111, 1113, 1121, 1130, 1132, 1138, 1143, 1146, 1149, 1152, 1159, 1167, 1173, 1176, 1186, 1191, 1199, 1218, 1221, 387, 405, 412, 439, 449, 450, 452, 492, 519, 569, 574, 577, 625, 638, 641, 642, 656, 822, 830, 372, 374, 384, 390, 397, 410, 420, 429, 448, 461, 462, 484, 506, 521, 540, 544, 547, 588, 629, 638, 649, 651, 653, 672, 688, 700, 767, 820, 822, 830, 832, 833, 839, 860, 880, 889, 1026, 1041, 1044, 1115, 1194, 1197.

- B. Evidence as to the familiarity of the public with the Kellogg name, its cartons, its products and the merchandising of its products in practically all grocery stores.

1. 50 witnesses testified that "Kellogg's" indicates the manufacturer or distinguishes the product as Kellogg's.\* There were no answers to such questions in the negative.

\* R. 684, 688, 692, 730, 739, 742, 748, 751, 755, 758, 761, 763, 768, 771, 775, 1024, 1032, 1034, 1036,

1038, 1040, 1043, 1046, 1048, 1054, 1057, 1065, 1067, 1070, 1074, 1079, 1090, 1111, 1114, 1118, 1136, 1142, 1145, 1149, 1152, 1153, 1155, 1158, 1175, 1186, 1191, 1199, 1206, 1215, 1218.

2. 65 witnesses testified they were familiar with "Kellogg's" in red script, or with the Kellogg name on cartons.\* No witness testified to the contrary.

\* R. 662, 666, 669, 671, 683, 688, 690, 706, 712, 714, 739, 748, 751, 755, 761, 763, 768, 771, 775, 778, 1024, 1036, 1038, 1040, 1043, 1046, 1048, 1052, 1054, 1060, 1065, 1067, 1075, 1079, 1081, 1090, 1095, 1100, 1111, 1114, 1118, 1121, 1125, 1132, 1136, 1138, 1142, 1145, 1154, 1155, 1166, 1171, 1173, 1175, 1181, 1186, 1193, 1196, 1198, 1201, 1206, 1209, 1215, 1218, 1221.

3. 43 witnesses testified they were familiar with Kellogg's red and green, or red, green and white make-up on its cartons.\* No witness testified to unfamiliarity with the Kellogg cartons.

\*R 681, 684, 692, 706, 712, 714, 739, 742, 751, 1024, 1029, 1032, 1034, 1036, 1038, 1046, 1048, 1057, 1059, 1060, 1065, 1074, 1079, 1081, 1095, 1100, 1111, 1133, 1142, 1145, 1149, 1167, 1171, 1173, 1175, 1181, 1186, 1191, 1198, 1201, 1206, 1215, 1218, 1221.

4. 145 witnesses testified they were familiar with or had purchased Kellogg's products.\* All consumers, retailers or wholesalers questioned on the subject testified that they were familiar with Kellogg products.

\* R. 358, 372, 379, 396, 402, 411, 413, 416, 422, 429, 437, 439, 443, 458, 472, 478, 483, 486, 488, 496, 501, 506, 509, 510, 513, 525, 535, 557, 564, 571, 576, 578, 581, 595, 599, 620, 624, 629, 632, 634, 637, 650, 653, 655, 666, 669, 674, 681, 684, 688, 690, 691, 692, 694, 701, 706, 714, 719, 730, 739, 742, 748, 751, 755, 758, 761, 763, 768, 771, 774, 778, 823, 825, 829, 831, 832,

834, 837, 838, 842, 845, 847, 849, 856, 858, 861, 863, 865, 873, 876, 880, 882, 888, 1024, 1029, 1032, 1034, 1036, 1038, 1040, 1046, 1048, 1057, 1060, 1065, 1067, 1069, 1072, 1074, 1079, 1081, 1089, 1094, 1099, 1111, 1114, 1118, 1120, 1135, 1138, 1142, 1145, 1149, 1152, 1153, 1155, 1158, 1166, 1171, 1175, 1179, 1181, 1186, 1191, 1193, 1196, 1198, 1201, 1205, 1209, 1215, 1218, 1221.

5. 25 witnesses testified they saw Kellogg's products for sale in most of the grocery stores they had been in.\* No witness testified to the contrary.

\* R. 712, 739, 742, 751, 758, 1066, 1075, 1081, 1090, 1095, 1111, 1125, 1132, 1138, 1167, 1171, 1173, 1175, 1182, 1187, 1191, 1194, 1196, 1198, 1201.

6. The witness Swan testified that Kellogg products were sold in over 90% of the grocery stores in the United States and that there were approximately 400,000 grocery stores in the United States (R. 278).

C. The evidence does not show consumer confusion or deception. It does show that the public readily distinguished between Skinner's and Kellogg's cartons.

1. 47 witnesses testified that "Kellogg's" stands out or is prominent on Kellogg's cartons, or that they recognized Kellogg's product by the red "Kellogg's" or the name "Kellogg's".\* No witness testified that "Kellogg's" was not prominent on Kellogg's cartons.

\* R. 706, 739, 743, 751, 755, 761, 771, 778, 1078, 1119, 1121, 1130, 1137, 1152, 1167, 1186, 1197, 1216, 688, 690, 714, 730, 768, 775, 1032, 1038, 1048, 1052, 1054, 1057, 1060, 1100, 1115, 1125, 1132, 1135, 1137, 1145, 1149, 1155, 1158, 1171, 1173, 1179, 1181, 1191, 1206, 1209.

2. 58 witnesses testified they had no trouble or they had never had any trouble distinguishing between Kellogg's and Skinner's cartons.\*

\* R. 736, 763, 1049, 1052, 1075, 1078, 1082, 1132, 1142, 1197, 1207, 1219, 668, 685, 690, 693, 699, 700, 720, 761, 771, 775, 1026, 1030, 1033, 1035, 1037, 1039, 1041, 1046, 1054, 1057, 1060, 1066, 1068, 1069, 1091, 1095, 1101, 1110, 1115, 1119, 1121, 1139, 1147, 1149, 1159, 1167, 1170, 1174, 1182, 1194, 1199, 1202, 1210, 1216, 1222.

3. 23 witnesses testified that when they bought Kellogg's Raisin 40% Bran Flakes, they knew they were buying Kellogg's product.\*

\* R. 666, 681, 696, 697, 699, 736, 773, 778, 1025, 1032, 1034, 1042, 1043, 1049, 1052, 1054, 1057, 1110, 1116, 1142, 1146, 1152, 1153, 1155.

4. 25 witnesses testified they had never heard of their customers' being confused between Exhibits 203 and 295 (Kellogg's and Skinner's cartons).\*

\* R. 702, 736, 763, 1026, 1030, 1037, 1039, 1041, 1049, 1052, 1057, 1069, 1072, 1082, 1095, 1101, 1121, 1125, 1132, 1142, 1187, 1202, 1207, 1219, 1222.

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